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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. 1004

Clifford F. Hansen,

Petitioner,

vs

Ann Lamm Haagensen,

Respondent

PETITION FOR RECONSIDERATION AND REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

TO THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 58, of the Rules of this Court, Petitioner petitions for a reconsideration of the Order of the Court dated Feb. 22, 1971, denying said Petition, and for a Rehearing thereof.

That the grounds hereof are that the Minnesota Court, under Minnesota law, had subject matter and personal jurisdiction therein, whereby said judgment could not be collaterally attached in Minnesota as a matter of law. And further, as a matter of Minnesota law, said Minnesota Judgment could be reviewed only by 1) appeal or 2) a direct proceeding in said Court. Whereby, as a matter of law, said Minnesota Judgment comes under Art. IV, of the Constitution.

That said grounds are substantial and controlling as a matter of law on all issues herein involved; and also as a matter of law on all courts herein under said Art. IV.

It appears that the same was not with sufficient succinctness pointed out and argued in the Petition for Certiorari, as well as obscured by the Decision of the Iowa Supreme Court.

That following are the reasons herefore:

Par. I - That the Iowa Courts, trial and appellate, were bound by and could not ignore the following:

1. Art. IV, Sec. #1, of U.S. Const. (App A-82).
2. Art. VI, of U.S. Const. (App A-83)
3. 28 USC Ann #1257, subd. 3, (App A-84)
4. 28 USC Ann #1738, (App A-83).

Summarizing, the Iowa Courts were bound by and required to adhere to the laws and rules of the State of Minnesota, such as they might be, in connection with said Minnesota Judgment. And the authenticated copy of said Judgment, (App A-1) established its prima facie validity.

Par. II - That in carrying out Par. I, above, the Iowa Courts are legally bound and required to adhere to the following:

1. Minnesota Constitution as to the jurisdiction of the Minnesota Court (App. A-26). Said jurisdiction being general.

2. Minnesota Rules of Civil Procedure, as set forth in Minnesota Statutes Ann. Vol 27A, Court Rules, published 1958.

3. Minnesota court decisions as summarized hereafter; and

4. Decisions of the U.S. Supreme Court, including particularly Milliken v Meyers, 61 S.Ct 339.

As stated by Bunn, J. in State ex rel Coburn v Ries, 1913, 123 Minn 397 (400), 143 NW 981, the rule in Minnesota is elementary that a Minnesota judgment of a court of general jurisdiction with subject matter and personal jurisdiction is binding until reversed or set aside by that court and cannot be attacked for error.

Said Minnesota judgments cannot be impeached collaterally, or attached collaterally for any error or irregularity. Early supporting Minnesota cases are:

Kipp v Fullerton (1860) 4 Minn 473 (G366)

Hotch v Cutting (1869) 14 Minn 537 (G408)
to the effect, no collateral attack for any irregularity; and citing numerous cases.

Cone v Hooper, 18 Minn 531 (G476)
to the effect that superior court proceedings are binding until set aside by tribunal of entry or reversed on error.

The Iowa Supreme Court in 1900 recognized the same rule. See Fred Miller Brewing Co. v Capital Ins. Co., Ia. 82 NW 1023 (1027).

Justice Jaggard, in Sodini v Sodini (1905) 94 Minn 301; 102 NW 860, summed up the law as follows:

1. A judgment of a court of superior or general jurisdiction cannot be collaterally attacked unless the record affirmatively shows want of jurisdiction. The cases sustaining this familiar and undisputed rule will be found collected in 30 Cent. Dig. cols. 933, 934, 1385-1395; Black on Judgments, #224, 263. A number of federal cases will be found collected in Southern Pac. R. Co. v U.S. 168 U.S. 1, 51; 18 Sup. Ct. 18, 27; 42 L. Ed. 355. And see Turrell v Warren, 25 Minn 9; Nye v Swan, 42 Minn. 244; 44 NW 9, Gulickson v Bodkin, 78 Minn. 35; 80 NW 783; 79 Am. St. Rep. 352; Hotchkiss v Cutting, 14 Minn 537 (G408); State v Macdonald, 24 Minn 48. A default

judgment in divorce proceedings is no more subject to such collateral attack than any other judgment. In re Newman's Estate, 75 Cal. 213; 16 Pac. 887; 7 Am Rep 146; 2 Current Law 595; Ruppin v McLachlan (Iowa) 98 NW 153. In Last Chance Min. Co. v Tyler Min. Co. 157 US 683; 691, 15 Sup. Ct. 733; 39 L Ed 859, Mr. Justice Brewer said: "But a judgment by default is just as conclusive an adjudication between the parties of whatever is essential to support the judgment as one rendered after answer and contest. The essence of estoppel by judgment is that there has been a judicial determination, and not upon what evidence, or by what means was it reached." The conclusive presumption of validity extends to the return of process upon which the judgment is based. 40 Cent. Dig. cols. 2752, 2753, #193. All intendments are indulged in support of the judgments of courts of general superior jurisdiction. 30 Cent. Dig. #934, cols. 1392-1395. Thus informalities, including errors in the name of the persons designated in the return of service of summons, are not sufficient basis for indirect impeachment of a judgment. * * *(cases). And if the language of the return fairly admits of a construction which will make the return legal and sufficient, it should be so construed. * * * (cases)."

In Milliken v Meyers, supra, this Court said that where the trial court, <u>under its laws</u>, (here, the Minnesota Court), has jurisdiction of the subject matter, (refer Par. III), and of the person of defendant, (refer Par. IV), that the full faith and credit clause of the Constitution <u>precludes</u> any inquiry, (here by the Iowa Courts), into:

1. Merits of the cause of action;
2. Logic or consistency of the decision;
3. Validity of the legal principles on which the judgment is based; and
4. Whatever mistakes of law may underlie the judgment.

The judgment here was one for money.

The Court did not say that a defendant could not move in the first court, here, the Minnesota court, for alleged regularities; but that, in a proceeding under Art. IV, any defense within said categories could not be litigated in the Iowa courts.

Par. III - Applying the Rules of Law set forth in Par. II, with respect to subject matter jurisdiction, the Minnesota Court being a constitional court of general jurisdiction, (Sec. 5, of Minnesota Const. App A-26), it must be held as a matter of law that the cause of action set forth in the Complaint (App. A-11, 12, 13, 14) money damages in connection with a Minnesota contract, and also any ancillary proceeding, is within the subject matter jurisdiction of the Minnesota Court. This being so, said money judgment cannot be collaterally attacked for irregularity as to procedures adopted by the Minnesota Court.

Any alleged error or irregularity can only be corrected by appeal or in a direct proceeding in the Minnesota Court.

The Minnesota Court determined that it had jurisdiction (App. A-11).

The decisions of the Iowa courts relate, not to subject matter jurisdiction, but to alleged irregularity during the course of the proceedings. But the Minnesota Court, as set forth in its Decision (App. A-6, et seq), did not consider such procedure irregular, but rather as legal under Minnesota Law.

It is of course a matter of law that the Defendant could not contradict the fact that the Minnesota Court is a constitutional court of general jurisdiction.

Par. IV - As to Par. II, with respect to personal jurisdiction over Defendant in the Minnesota Court, the facts in the case are definite as respects the voluntary acts of Defendant and Defendant's attorney. The Iowa Courts so admit. There is no service of Summons to vacate, and thus establish that the court is without personal jurisdiction. There is no extrinsic evidence to raise an issue of fact for either a court or jury. The only issues are of law.

In connection with ancillary proceedings, Defendant was personally served in Iowa with a copy of the Minnesota Summons and Complaint, setting forth a money demand. Thus, due notice. But this involved no obligation for personal appearance. (App. A-29).

There being no appearance within 20 days, an affidavit of default was filed. (App. A-9). The then status of the action was quasi in rem. The pleadings contain no reference to any real estate.

Thereafter, Defendant filed several papers, signed pro se and verified before a notary public. These papers purported to be special appearances. (App. A-18; A-20).

The Minnesota Rules of Civil Procedure make no provision for special appearance. What is left of the procedure is limited. The Minnesota Supreme Court, in Cummiskey v Cummiskey, (1961), 259 Minn. 427; 107 NW (2) 864, (868), said:

> "The accepted purpose of a special appearance is to challenge the jurisdiction of the Court over the person of Defendant."

The purpose here was not to set aside service of a summons. Defendant appeared voluntarily. Defendant's attorney said his purpose was to challenge the "jurisdiction" of the Court.

The Court, as a constitutional court of general jurisdiction (Minn. Const. Sec. #5) had jurisdiction of the subject matter. The challenge was to the "power" of the Court to exercise that jurisdiction. (App. A-18, A-20). The Court had that "power". Clements v Utley, 91 Minn 352; 68 NW 188. It is not for the Iowa courts to gainsay. Defendant's attorney admitted appearing before Judge Knutson; and the Court so found. (App. A-23). On the authority of Clements v Utley, Judge Knutson overruled Defendant. (App. A-23-35). No appeal was taken. And said Order of Judge Knutson was affirmed in the Decision of the Court. (App. A-9).

As to the contentions of the Iowa Courts as to the invalidity of the Orders of Judge Hall and Judge Knutson, see Par. V hereof.

At the time of filing the first paper, one Everett Gross, representing himself as a Montana attorney, but then living in Iowa, made application to the Court to represent Defendant. This application was allowed, but inadvertently an order in the matter was not then made. This was covered by a nunc pro tunc order, supplementing the record, but nothing more. (App. A-29). While that attorney claims he was not notified of such allowance, he did appear in Court and argue the claims made by Defendant. The fact is that Defendant was in court pro se and by attorney. And this is not a case of unauthorized representation.

The statutory basis of the ancillary proceeding was MRCP 4:04 then in effect. (App. A-27). It contained no provision for a special appearance to question the jurisdiction of the Minnesota Court over the subject matter. And even though the ancillary proceedings might have been invalid, the statute brought such party within MRCP 5:01 (App. A-27) as having appeared by filing a

paper. (The section was amended 10 years later, but certainly not to cover a valid situation.)

And it is a contradiction to employ a special appearance under MRCP 4:04 to set aside a voluntary appearance. The act of Defendant related to the subject matter, and not to the person.

Defendant did not claim that the Court did not have jurisdiction over ancillary proceedings; or that Plaintiff had not legally invoked the jurisdiction of the Court therein.

The claim was made that the Hennepin County District Court did not have power to issue an order effective in another county in the state. The attack was upon the power of the court. The property in which Defendant had an interest was in Fillmore County. Motions of Defendant, (App. A-18, A-20). And a voluntary appearance and challenge to the jurisdiction of the Court itself, whereby the Court is asked to rule on its own powers, constitutes an "appearance" and a submission to the jurisdiction of the Court for all purposes. Burger v Berger, 1957, Tex. 298 SW(2) 119. Here, Defendant definitely attacked the power of the Minnesota Court. And whether the attack was by motion or other pleading is not material.

In this connection, Defendant further admitted jurisdiction in the Minnesota Court, by praying: "The Defendant asks that said pretended service be quashed and that this action be dismissed at Plaintiff's costs." In Minnesota, costs are an incident of jurisdiction, without which costs cannot be assessed or allowed. Also, the Court was asked to assert its jurisdiction and dismiss the action.

The motions of Defendant (App. A-18, A-20) relate to subject matter jurisdiction and not to

personal jurisdiction. (see Cummiskey v Cummiskey, supra). And such claimed lack of jurisdiction was special and not general.

The motion of Defendant was denied. (App. A-23). The claim made therein was contrary to Minnesota law. Clements v Utley, supra. Whether such attack was by motion or pleading is not material. The Defendant by said voluntary appearance was in; and was then required to appeal or file an answer under MRCP 12. On appeal from any judgment thereafter, Defendant could again renew the claims made in the Motion.

Defendant had full notice of the claim made in the Complaint; and also an opportunity to be heard thereon. No issue under the 14th Amendment is involved. The claims of Defendant were voluntarily limited; such limitation was self-imposed. Upon being so overruled, Defendant was in for all purposes. Hughes, C.J. in Chicot v Baxter, 60 S Ct. 317; 308 US 271; Grubb v Publ. Util. Comm. 50 S Ct 378; 281 US 470. Defendant was not free to just walk away. And failing to either appeal or answer, the Minnesota Court may enter a default judgment without notice. Justice Mitchell, in Heinrich v Englund, 34 Minn 395; 26 NW 112. Notice thereafter was by the Clerk under MRCP #77:04. After receipt of such Notice by the Clerk, Defendant could have moved the Minnesota Court for any relief claimed proper. The Iowa Courts ruled contrary to Minnesota Law, on an alleged irregularity, notwithstanding full jurisdiction in the Minnesota Court as set forth in its Decision. (App. A-11).

After lapse of sufficient time to establish abandonment and default, a second and appropriate affidavit of default was made. The Court then filed its Decision. (App. A-6-17). And pursuant thereto the Clerk entered the Judgment sued on and covered in the authenticated copy. (App. A-1).

In this connection, see Johnson v DiSievens, 1956, 347 Minn 118, 78 NW (2) 960. A letter by a Michigan attorney to the Texas Court was held to be an appearance; under the Texas Code.

Also, Johnson v Haley, 1957, 357 Mich 411; 98 NW (2) 355. Defendant appeared specially in California Court and objected to its jurisdiction. He was overruled and withdrew. Upon being sued in Michigan, Defendant attempted again to contest California ruling of jurisdiction.

Par. V - Applying the Rules of Law in Par. II, with respect to miscellaneous matters adopted by the Iowa Courts as the basis of refusal to give full faith and credit to the Minnesota Judgment, being matters which the Minnesota Court as set forth in Par. II, has ruled cannot be used to collaterally attack a Minnesota Judgment.

Nunc Pro Tunc Orders. MRCP Minn Stat Ann V-27A, pub. 1958, provides for ex parte orders. Sec. 5:01, 6:04, 77:04 and 103:03.

A nunc pro tunc order is a limited form of ex parte order. Its function is to supply a record of judicial action previously taken; to supply omissions in the record of what was previously done; and to make the record speak the whole truth. An examination of the Order by Judge Hall (App A-29), clearly shows that it only completes the court record. Does any member of the Court think that the Chief Judge could be induced to sign a false order? Likewise, the Order by Judge Knutson (App. A-23-25). Does any member of the Court think that Judge, now Chief Judge, would falsify a court record?

See, Minn. Practice & Procedure, 1923, Elliot, (ex-Minn. S Ct. Jus.), (Vol 1, pp 284-5, Sec. 324 (abbr). When a direction or decision has been made, but not reduced to writing, the Court may at a latter date sign and enter the order as

of the time when it was actually made. To the same effect, Wright v Nicholson (1980) S Ct 134 US 136. A nunc pro tunc order, not being appealable, cannot be collaterally attacked in Minnesota; likewise out of the state.

As to objections by the Iowa Courts as to the entry of the Minnesota Judgment, refer: Justice Mitchell, in Heinrich v Englund, supra. Syl. "In an action arising on contract for the payment of money only, where there has been an appearance but no answer by defendant, he is not entitled to notice of the entry of judgment". And as to notice, see MRCP #77:04, Minn Stat Ann V-27-A, pub. 1958. After receipt of such Notice, defendant could have moved the Minnesota Court for any relief claimed proper.

CONCLUSION

The Decisions of the Iowa Courts are in violation of said Art. IV, (Par. I) and of Minnesota Law, (Par. II); with important fact recitals therein not in accord with the Record.

As a matter of law, the Iowa Courts are required to give the Minnesota Judgment the same force and effect as it has in Minnesota. See Par. III and IV.

And also as a matter of law, alleged irregularities are irrelevant. See Par. V.

With subject matter and personal jurisdiction under Minnesota Law, any alleged irregularities in the Minnesota Judgment sued on, being the Judgment set forth in the authenticated copy (App. A-1) must be corrected by appeal or by direct proceedings in said Minnesota Court, as required by said Art. IV.

For the foregoing reasons, Petitioner respectfully prays that this Court grant the Relief herein

prayed including a further consideration and Rehearing with respect to said Petition for Writ of Certiorari.

Respectfully submitted

Clifford F. Hansen
1040 Midland Bank Building
Minneapolis, Minnesota 55401
Attorney Pro Se

Hon. Harry H. Peterson
Of Counsel

CERTIFICATE OF GOOD FAITH BY COUNSEL

The undersigned, as Counsel Pro Se, does hereby certify that the

PETITION FOR RECONSIDERATION AND REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

submitted herewith is presented in good faith and to raise questions of law as therein set forth; and not for delay.

Dated, this 10th day of March, 1971.

Clifford F. Hansen
Counsel Pro Se